

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**DERAUGHN BROWN,**

**Petitioner,**

**v.**

**JAMES HURLEY<sup>1</sup>,**

**Respondent.**

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**No. 4:13-cv-01515-JAR**

**MEMORANDUM AND ORDER**

This matter is before the Court on Petitioner Deraughn Brown's Motion Requesting Permission to Submit Supplement Reply Brief (Doc. 17). Petitioner seeks leave to file a supplemental reply brief to clarify/correct deficiencies in arguments already presented in his reply brief. For good cause shown, the Court will grant Petitioner's Motion.

Petitioner also filed a motion entitled "Consideration of Evidentiary Hearing" in which he requests an evidentiary hearing (Doc. 18). Petitioner asserts that this is not a matter that could be resolved based on the state court record because his claims were not presented in state court due to post conviction relief counsel's ineffectiveness. Petitioner also argues that the Court should consider a hearing because there are relevant facts in dispute on this "insufficient record". Specifically, Petitioner notes that he and Respondent are in dispute about counsel's testimony at the post-conviction hearing regarding whether counsel discussed the potential of a lesser-included offense. This is Petitioner's second such motion. Again, at this stage of the litigation, it

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<sup>1</sup> Petitioner is currently incarcerated at Northeast Correctional Center ("NECC") in Bowling Green, Missouri. James Hurley is the current Warden and proper party respondent. *See* 28 U.S.C. § 2254, Rule 2(a).

appears that the state court record contains sufficient facts to make an informed decision on the merits of Petitioner's claims. Petitioner is further advised that the "state court record" contains portions of his post-conviction file including a transcript of the evidentiary hearing. If the Court later determines that this record is insufficient to resolve the issues, the Court will schedule an evidentiary hearing. Therefore, the Court will deny Petitioner's motion at this time.

Accordingly,

**IT IS HEREBY ORDERED** that Petitioner Deraughn Brown's Motion Requesting Permission to Submit Supplement Reply Brief (Doc. 17) is **GRANTED**.

**IT IS FURTHER ORDERED** that Petitioner's motion entitled "Consideration of Evidentiary Hearing" (Doc. 18) is **DENIED, without prejudice**.

Dated this 2nd day of October, 2015.

A handwritten signature in dark ink, appearing to read "John A. Ross", is written over a horizontal line.

**JOHN A. ROSS**  
**UNITED STATES DISTRICT JUDGE**